

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.7029 of 2012

=====

Rajeshwar Prasad Shahi S/O Late Ram Charitra Prasad Shahi R/O Moolchand Path, Chitragupta Nagar, P.S. Patrakar Nagar, District-Patna

... .. Petitioner

Versus

1. The State of Bihar
2. Kumud Ranjan S/O Rajeshwar Pd. Shahi R/O P.C.Colony, P.S.Kankarbag, District-Patna

... .. Opposite Parties

=====

Appearance :

For the Petitioner/s	:	Mr. Prasoon Sinha, Adv. Mr.Prabhat Kumar, Adv.
For the Opposite Party/s :		Mr. Damodar Prasad Tiwary, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT

Date : 07-09-2017

Heard Sri Prasoon Sinha, learned counsel, assisted by Sri Prabhat Kumar, learned counsel for the petitioner and Sri Damodar Prasad Tiwary, learned Addl. Public Prosecutor. None appeared on behalf of the complainant/Opp.Party no.2.

2. The petitioner, who is own father of complainant/Opp.Party no.2, has approached this Court , invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure , with a prayer to quash an order dated 28.11.2011 passed by the learned Judicial Magistrate, 1st Class, Patna Sadar, Patna in Complaint Case No.2254(C)/2011, T.R. No.2153/11. By the said order, the learned Magistrate has taken cognizance of offence under Sections 379, 323, 451, 427/34 of the Indian Penal Code.



3. Short fact of the case is that the complainant/Opp.Party no.2, on 18.08.2011, filed a complaint petition in the court of the learned Chief Judicial Magistrate, Patna, which was numbered as Complaint Case No.2254(C)/2011. In the complaint, it was alleged that the petitioner along with number of accused persons entered into the shop of the complainant and ransacked his shop, assaulted and also snatched golden chain from the neck of the complainant besides taking cash and mobile etc.

4. After filing complaint, the complainant examined witnesses in support of the complaint case and finally the learned Magistrate by the impugned order has taken cognizance and directed for issuance of summons. Cognizance order has been passed for offence under Sections 379, 323, 451, 427/34 of the Indian Penal Code.

5. On being asked, Sri Prasoon Sinha, learned counsel for the petitioner was not in a position to satisfy the court as to on face of the impugned order, there is illegality or not. However, by way of referring to Annexure-2 to the present petition i.e. copy of the F.I.R. in Patrakar Nagar P.S. Case No.153/2011 registered for the offence under Sections 323, 341/34 of the Indian Penal Code, which was filed on 18.07.2011, he has argued that initiation of the proceeding against the petitioner is itself malicious and, as such,



the order impugned is liable to be set aside. He has argued that on 18.07.2011 itself, the complainant of the present case and his other two sons had assaulted the petitioner, while he was in the shop and, thereafter, F.I.R. was lodged on the same day i.e. 18.07.2011. During investigation, the accusation against the complainant of the present case and others were found true and the police submitted chargesheet on 30.07.2011 against the complainant of the present case and other two accused persons. It has been argued that the complainant with a view to save his skin in Patrakar Nagar P.S. Case No.153/2011 as well as unauthorisedly taking property of the petitioner has filed the present case. It has been argued that the petitioner had gifted his Flat to his grand-son and, thereafter, dispute arose and his two sons started to pressurise the petitioner and this was the reason that the complainant with other two brothers had assaulted the petitioner on 18.07.2011 and this was the reason that F.I.R. by the petitioner was filed against the complainant and his other two sons, which was filed on 18.07.2011. By way of referring to the date of occurrence in the present complaint petition, he submits that in the complaint petition also, the date of occurrence has been mentioned as 18.07.2011, but no explanation has been given as to why complaint petition was filed after about one month from the



date of occurrence, whereas in relation to the same occurrence, from the petitioner's side itself on 18.07.2011 , an F.I.R. was lodged. On perusal of the complaint petition also, it is evident that the complainant is the own son of the petitioner.

6. On examination of entire fact available on record, the Court feels that initiation of the proceeding against the petitioner appears to be malicious . Of course technically in the order of cognizance, there is no apparent error, but considering the fact that the proceeding has been initiated maliciously , the Court is of the opinion that the order impugned can be set aside.

7. Accordingly, the order dated 28.11.2011 passed by the learned Judicial Magistrate, 1st Class, Patna Sadar, Patna in Complaint Case No.2254(C)/2011, T.R.No.2153/11, so far as the petitioner is concerned, is hereby set aside.

8. The petition stands allowed.

(Rakesh Kumar, J)

nawalkrs/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	12.09.2017
Transmission Date	12.09.2017

